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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,716	02/10/2000	Kazuichi Ooe	1046.1209/JDH	4289
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STAAS & HALSEY LLP			EXAMINER	
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1201 NEW YORK AVENUE, N.W.				
WASHINGTON, DC 20005			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/501,716	<b>Applicant(s)</b> OOE, KAZUCHI
	<b>Examiner</b> SABA TSEGAYE	<b>Art Unit</b> 2467

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 November 2010.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 12-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 15-17,22 and 24-28 is/are allowed.
- 6) Claim(s) 12-14,18-20 and 23 is/are rejected.
- 7) Claim(s) 21 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**Response to Amendment**

1. This Office Action is in response to the amendment filed 11/22/10. Claims 12-28 are pending. Claim 21 is objected and claims 15-17, 22 and 24-28 are allowed.

**Claim Objections**

2. Claims 18 and 21 are objected to because of the following informalities:

Claim 18, lines 7, 8 and 11, the phrase “each of the other communication devices” is informal.

Claim 21, line 7, the phrase “each of the communications” is informal. Appropriate correction is required.

**Claim Rejections - 35 USC § 103**

3. Claims 12, 13, 18, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosaka (US 6,574,209 B1) in view of Raith (US 6,760,311 B1).

Regarding claim 12, Kosaka discloses a communication method of performing communications between a communication device (portable telephone; party A) and other communication device (party B) each capable of performing communications (...a receiver-transmitter that receives and transmits high frequency signals...) in a plurality of different communication modes (voice & image mode and image mode), the method comprising:

measuring communication performances (measuring amplifier temperature) of communication between the communication device (party A) and the other communication

device (party B) by communicating between the communication device and the other communication device in each of the plurality of different communication modes (voice & image mode and image mode), under a plurality of different communication conditions (communication speeds) for each of the different communication modes (voice mode and data mode) respectively:

determining, as a threshold , a communication condition that the corresponding measured communication performance of communication between the communication device and the other communication device in one of the communication modes exceeds a measured communication performance of communication in the other communication mode based on a result of the measurement (Fig. 1, step 4, it is determined whether the transmitting amplifier temperature is a higher than a predetermined first threshold..);

selecting, before performing actual communication between the communication device and the other communication device under a certain communication condition (communication speed), a communication mode that the communication performance of a communication between the communication device and the other communication device under the certain communication condition of the actual communication exceeds the communication performance of the other communication mode as an optimum communication mode, by comparing the communication condition of the actual communication and the determined threshold (.. the transmitting speed is controlled to a predetermined second speed that is slower than the predetermined first speed when the temperature of the transmitting amplifier exceeds the predetermined first temperature; and the transmitted speed is controlled again to the predetermined first speed when the temperature of the transmitting amplifier becomes below a

*predetermined second temperature that is lower than the predetermined first temperature...as shown in Fig. 1); and*

performing the actual communication between the communication device (party A) and the other communication device (party B) in the selected communication mode (both of the voice and image data are transmitted during the period in which commutation is performed at the high speed, when the communication speed is switched to the low speed to avoid overheating of the device, only the voice data are transmitted... see Abstract; column 2, lines 6-36).

Kosaka does not expressly disclose measuring communication performance before performing actual communication.

Raith teaches that temperature T, of the mobile station is measured using device or sensor. A comparison with a stored threshold temperature is performed before actual communication (see Fig. 2, steps 200-202).

It would have been obvious to one ordinary skill in the art at the time the invention was made to use the teachings from Raith of measuring communication performance before performing actual communication in the mobile station disclosed by Kosaka. One ordinary skill in the art would have been motivated to do this because measuring before actual communication allows the system to reallocate resources to other mobile stations, thereby reducing power dissipation within the mobile station (Abstract; column 2, lines 37-42).

Regarding claim 13, Kosaka discloses wherein the communication device is **capable of** communicating with a plurality of other communication devices the measuring of

communication performances and the determining of the threshold are performed for each of the communication devices (...Fig. 1 shows communication between two parties. However, Kosaka discloses a radio communication device such as portable telephone that operates under the CDMA system, which is **capable of** communicating with plurality of other communication devices...).

Regarding claim 19, Kosaka discloses a method for optimizing communication condition of a communication between a communication device (party A) and other communication device (party B), the method comprising:

communicating , on a same communicating line, with the other communication device in both a first communication mode (voice & image mode)and in a second communication mode (image mode) that is different from the first communication mode respectively, under a plurality of different communication conditions (communication speeds);

obtaining communication performances for each of the communications with the other communication device (Fig. 1, step 4, it is determined whether the transmitting amplifier temperature is a higher than a predetermined first threshold.);

measuring a communication performance in the first communication mode, and a communication performance in the second communication mode under each of the different communication conditions (...when the transmitting amplifier temperature is lower than a predetermined first temperature, communication speed of the device set high speed. when the transmitting amplifier temperature exceeds the first temperature during operation at the high

speed, the communication speed is automatically switched to a low speed...; column 2, lines 17-27);

determining, based on the communication performances measured under each of the different communication conditions, a communication condition in which a communication performance of the first communication mode exceeds a communication performance of the second communication mode (both of the voice and image data are transmitted during the period in which commutation is performed at the high speed. when the communication speed is switched to the low speed to avoid overheating of the device, only the voice data are transmitted... *see Abstract; column 2, lines 6-36*); and

before starting communication with the other communication device in a particular communication condition, selecting, among the first communication mode and the second communication mode, a communication mode corresponding to a particular communication condition and the other communication device, for actually communicating with the other communication device under the particular communication condition, that the communication performance exceeds that of the other communication mode (both of the voice and image data are transmitted during the period in which commutation is performed at the high speed. when the communication speed is switched to the low speed to avoid overheating of the device, only the voice data are transmitted... *see Abstract; column 2, lines 6-36*).

Kosaka does not expressly disclose measuring communication performance before performing actual communication.

Raith teaches that temperature T, of the mobile station is measured using device or sensor. A comparison with a stored threshold temperature is performed before actual communication (see Fig. 2, steps 200-202).

It would have been obvious to one ordinary skill in the art at the time the invention was made to use the teachings from Raith of measuring communication performance before performing actual communication in the mobile station disclosed by Kosaka. One ordinary skill in the art would have been motivated to do this because measuring before actual communication allows the system to reallocate resources to other mobile stations, thereby reducing power dissipation within the mobile station (Abstract; column 2, lines 37-42).

Regarding claim 23, Kosaka discloses wherein one of the communication performance of communication is communication speeds of the communication between the other communication device under the different communicating condition and the communication mode (...when the transmitting amplifier temperature becomes below a second temperature that is lower than the first temperature the communication speed is switched back to the high level to resume transmission of both voice and image data...Abstract; Fig. 1, steps 7, 8 and 1).

Regarding claim 18, Kosaka in view of Raith discloses all the claim limitations as stated above, except for a computer readable medium.

However, Kosaka discloses, in fig. 3, relation between the transmitting amplifier temperature Tta and the communication speed controlled under the **program** shown in Fig. 1 (column 5, lines 22-24). Therefor, it would have been obvious to one ordinary skill in the art at

the time the invention was made to use computer readable medium. The benefit using computer-readable medium is that programs can be changed and upgraded and new futures are added easily than hardware changes.

4. Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosaka in view of Raith as applied to claims 12 and 19 above, and further in view of Vembu (US 6,259,928 B 1) and Liu et al. (US 6,252,900B1).

Regarding claims 14 and 20, Kosaka in view of Raith discloses all the claim limitations as stated above; except for the communication condition is a size of data.

Vembu teaches determining system performance based number of frame (size of data) received with errors or on the number of errors in the received signal (See Fig. 3, steps 308, 312; column 10, lines 1-6).

It would have been obvious to one ordinary skill in the art at the time the invention was made to incorporate size of data, such as that suggested by Vembu, to determining communication condition disclosed by Kosaka in view of Raith. One of ordinary skill in the art would have been motivated to do this because the size of data allows the receiver to know if a packet fails to transmit, or if the packets get transmitted out of sequence.

#### **Allowable Subject Matter**

5. Claim 21 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action.

6. Claims 15-17, 22 and 24-28 are allowed.

**Response to Arguments**

7. Applicant's arguments with respect to claims 12-28 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SABA TSEGAYE whose telephone number is (571)272-3091. The examiner can normally be reached on Monday-Friday (7:30-5:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj Kumar can be reached on (571) 272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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